EVIDENCE—PRIVILEGED COMMUNICATIONS BETWEEN HUSBAND AND WIFE—"ANY COMMUNICATION" CONSTRUED.—An Oregon statute provided that neither husband nor wife could be, without the consent of the other, examined as to any communication made by one to the other during the marriage relation. In an action for alienation of affections, *held*, this statute applies to all communications, and not merely to communications confidential in their nature. *Pugsley* v. *Smyth* (Ore., 1921), 194 Pac. 686.

Another state is thus added to those whose literal interpretation allows such a statute, in the language of Professor Wigmore, "to create an intolerable anomaly in the law of privileged communications." WIGMORE, EV., § 2336. Iowa, Michigan, Ohio, Utah and Washington have construed "any communication" to mean only those which in their nature seem confidential. See *Sexton* v. *Sexton*, 129 Iowa 487; *Ward* v. *Oliver*, 129 Mich. 300. California, Colorado, Illinois, Rhode Island and Virginia construe the words in their natural meaning to embrace all communications of whatever kind. *Park* v. *Park*, 40 Colo. 354; *Reeves* v. *Herr*, 59 Ill. 81. The reason for this difference of view no doubt arises partly from the conflict as to the extent of the common law rule. The Minnesota court says that the common law was settled in England in 1842 by the case of *O'Connor* v. *Majoribanks*, 4 Mann. & Gran. 435, and extended to communications on all subjects. *Leppla* v. *Minn. Trib. Co.*, 35 Minn. 310. See also BEST, EV. [10th Ed.], 175. Yet many years later it was declared that the common law rule extended only to confidential communications. *People* v. *Mullings*, 83 Cal. 138. Statutes removing disability of witnesses on account of being parties to, or interested in, the action have been held not to remove the disability existing between husband and wife as to confidential communications. *Gee* v. *Scott*, 48 Tex. 510; *Hopkins* v. *Grimshaw*, 165 U. S. 342. These decisions seem to indicate that the chief reason for the privilege was to protect the confidences of the marriage, and not because of the common law doctrine of the legal identity of husband and wife. *O'Connor* v. *Majoribanks*, *supra*, recognizes that public policy was the foundation for the rule, but denies that the rule would be effective if extended only to confidential communications. It would seem, however, that the rule should be coëxtensive with the reason. See 9 MICH. L. REV. 248.

EVIDENCE—"THIRD DEGREE" CONFESSION NOT VOLUNTARY.—Plaintiff in error had been convicted of murder solely upon his own repudiated confession, which was made under the following circumstances: While being held incommunicado, without process, he was questioned almost continuously by various officers for the greater part of four nights and three days; no threats of violence or hope of leniency were held out; he was warned that anything he might say would be used against him. After professing total ignorance of the crime during all this time, he finally confessed to having driven the automobile from which the fatal shots were fired. *Held*, confession was not voluntary and was inadmissible in evidence. *Vinci* v. *The People* (Ill., 1920), 129 N. E. 193.

In approaching the question of the admissibility of confessions two conflicting considerations must be borne in mind. On the one hand, the state would be seriously handicapped in the apprehension and conviction of criminals if only spontaneous confessions were permitted. On the other hand, the accused, who is presumptively innocent, has the unquestioned right to make no statement whatever. There is considerable tendency, either by statute or judicial decision, toward holding confessions not voluntary where the only element of coercion is persistent and long-continued questioning. KY. ST. 1912, c. 135, p. 542; *Com.* v. *McClanahan*, 153 Ky. 412; *People* v. *Borello*, 161 Cal. 367; *State* v. *Thomas*, 250 Mo. 189; *Ammons* v. *State*, 80 Miss. 592; *Gallaher* v. *State*, 40 Tex. Cr. R. 296. Professor Wigmore distinctly disapproves of this tendency. 5 WIGMORE ON EVIDENCE [2nd Ed.] § 851. Baron Parke characterized it as "sacrificing justice and common sense at the shrine of mercy." *Reg.* v. *Baldry*, 12 Eng. L. & Eq. R. 590. The amount of persuasion which will render a confession involuntary must depend largely upon the circumstances of each case, with due regard to the age, mentality, and physical endurance of the prisoner. If the questioning is so long continued that the prisoner's power of resistance is broken down, or that his only hope of surcease seemingly lies in giving the answers that the questioner expects, it would seem palpable that the confession is not voluntary. Even if admitted, its probative value would be rather slight. No valid objection is seen to a reasonable amount of questioning. It is submitted that the surest and most convenient way to prevent excesses by those in authority, spurred on by the popular demand for the suppression of the ever present "crime wave," is to render confessions inadmissible in evidence when they are so improperly obtained. It is felt, however, that the trial court is in a much better position to determine the effect which the interrogation had upon the prisoner than an appellate court can possibly be, and, therefore, the power of review should be exercised very sparingly.

GIFTS—DIRECTIONS TO THE DEBTOR TO PAY DEBT TO DONEE IS SUFFICIENT DELIVERY.—Defendant was indebted to the plaintiff's testatrix. There was no written evidence of the debt. Plaintiff's testatrix orally directed the defendant to pay $1,000 to her grandchild upon her death, which he did. Plaintiff, as administrator of the estate, sued to recover the money on the ground that the intent to make a gift was not executed by a delivery. The question was whether an unqualified direction by the creditor of a debt unevidenced by any writing to the debtor to pay another was a sufficient constructive delivery. It was *held* that, the creditor having done all that was possible under the circumstances to put the debt out of his control, there was a sufficient constructive delivery. *Dinslage* v. *Stratman* (Neb., 1920), 180 N. W. 81.

To be a valid parol gift, there must not only be an intent to give but there must be a delivery. *Irons* v. *Smallpiece*, 3 B. & Ald. 551 (1819). But just what will constitute a delivery has frequently troubled the courts. In *Poff* v. *Poff* (Va., 1920), 104 S. E. 719, 19 MICH. L. REV. 552, the creditor of